IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1069 OF 2005

Gulab Maruti Ambekar & ors. ... Appellants

V/s

Chandrashekhar Madhukar Tikhe & ors. ... Respondents

Mr. G.S. Godbole for the appellants.

Mr. S.J. Rairkar for the Respondent Nos. 1 to 4.

CORAM: P.V. KAKADE, J.

DATED: 20TH OCT., 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. Ad-hoc District Judge, Pune, dated 14.7.2005 allowing the appeal and setting aside the judgment and order passed by the Trial Court in R.C.S. No. 1571 of 1982 dated 31.7.1999.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs filed the suit for declaration and

injunction and in the alternative for possession of the suit property which consisted of Survey Nos.53/3-A, 53-3-AA, 54/3-A and 55/12-3-A, situated at village Mohammedwadi, Tal. Haveli, Dist. Pune. It was the case of the plaintiffs that the lands were alleged to be belonging to the father of plaintiffs and husband of plaintiff No.3 by name Madhukar Tikhe. Said Madhukar Tikhe died on 30.12.1971 and the lands were inherited by the plaintiffs. The common ancestor of defendants by name Maruti Gopal Ambekar was alleged to be the tenant in the suit property, however, the tenant alleged to have surrendered the lands in favour of the landlord Maruti and his surrender came to be asserted by the competent Court. Thereafter, father of plaintiff Madhukar alleged to have sold 1/2 portion from the suit property in favour of Maruti and executed the sale deed on 15.3.1964. It is the case of the plaintiffs that the defendants were trying to obstruct the plaintiffs' possession over 1/2 portion in the suit lands. The obstruction was alleged to be commenced in between 18.4.1981 to 24.4.1981. Thereafter, the plaintiffs amended the plaint and contended that, during the pendency of the suit the defendants forcibly dispossessed them from 1/2 portion of the suit lands and hence the suit came to be filed for possession and

consequential reliefs.

4. Defendants contested the suit inter-alia denying the allegations made by the plaintiffs. It was their contention that their common ancestor Maruti has surrendered all the lands in favour of father of the deceased plaintiff and husband of plaintiff No.2 and the surrender was asserted by the Agricultural Land Tribunal, Haveli. The defendants further contended that landlord Madhukar then subsequently sold 1/2 portion in the suit land in favour of Maruti by sale deed dated 15.3.1964. Defendants also denied any forcible taking of possession of the suit land and, as such, sought dismissal of the suit.

5. The learned Trial Judge adjudicated the dispute on merits and on the basis of available evidence came to the conclusion that the plaintiffs had proved that deceased Maruti Gopal Ambekar surrendered the suit property in favour of deceased father of the plaintiff Nos. 1, 2 and 4 and husband of plaintiff No.3. It was further held that plaintiffs had also proved that defendants without any reason and any right were trying to obstruct the plaintiffs from enjoying the suit property. It was further held that the defendants had

proved that they were in actual possession of the suit property and came to the conclusion that the defendants had failed to prove their adverse title to the suit property and, as such, the suit came to be dismissed.

The appeal was carried to the District Court at Pune. The learned Addl. District Judge, after hearing both parties, came to the conclusion that the findings recorded by the learned Trial Judge erred in law and facts. It was held that the common ancestor of plaintiffs by name, Madhukar was entered in possession of 1/2 portion of the suit lands and after demise of Madhukar, plaintiffs continued to remain in possession of the suit lands. It was also held that plaintiffs were dispossessed forcibly by the defendants from the suit lands. It was further held that the defendants had failed to prove their adverse title and, as such, the appeal came to be allowed. The suit was decreed. Hence the present appeal.

6. At the outset, it may be noted that, there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellants sought to raise two questions of law to the effect that, the lower appellate Court had ignored the position that

though on paper there is surrender of the land in view of the provisions of the Bombay Tenancy Act by Maruti in favour of Madhukar, yet no portion of the suit land was delivered by him in possession of Madhukar and Maruti and thereafter his legal heirs continued to be in possession of the entire suit land. The next question sought to be agitated was to the effect that the lower appellate Court erred in holding that there is no iota of evidence to show that the appellants or their ancestor Maruti were in possession of northern 1/2 portion of the suit land and further wrongly held that the appellants were ascertaining their possession in northern 1/2 portion only for the reason that after filing of the suit, the respondents amended the plaint and claimed the relief of possession.

7. If these two questions sought to be raised are assessed on the basis of available evidence on record, it is quite clear that those cannot be held to be substantial question of law as contemplated under Sef.100 of the C.P.C. Moreover, as observed by the lower appellate Court, the documents of surrender Exhs. 60 and 61 suggest that the Revenue Officers recorded the findings that the common ancestor of defendants had surrendered the entire suit land in favour of Madhukar

and subsequently Madhukar sold the southern 1/2 portion in the suit lands in favour of Maruti. There is specific mention in these orders of the Revenue Court that, by virtue of surrender and sale of the lands, the landlord Madhukar was inducted in northern 1/2 portion of all the suit lands and remaining southern portion continued to be remained in possession of tenant Maruti on the basis of the sale deed executed by Madhukar. Statements of Maruti came to be recorded by the Revenue Officer vide Exh.62, wherein Maruti has admitted that northern portion of the suit land had been delivered in possession of the plaintiffs' ancestor Madhukar. It was also deposed that he continued his possession in southern 1/2 portion in all the lands after surrender of lands on the basis of the sale deed.

On this back ground, it was noted by the lower appellate Court that the evidence of the Revenue Courts and statement of tenant Maruti, the position has to be accepted that tenant had surrendered the lands in toto in favour of the landlord Madhukar and Maruti delivered the northern 1/2 portion in favour of Madhukar and Maruti purchased the southern 1/2 portion of the land from the landlord Madhukar and became owner of such portion of suit land itself. Therefore, these facts

occurred during the life time of Maruti cannot be denied by his successor subsequently as they did by filing the written statement. Therefore, whatever common ancestor has admitted by his own words during the life time before the competent authorities, has to be relied upon and consequently, there is no scope to presume that defendants were remained in possession of the entire suit lands even after surrender of all the lands by their common ancestor.

8. The learned counsel for the appellants also sought to attack the reasoning of the lower appellate Court on the basis that he has relied upon 7x12 extract in order to come to the conclusion regarding possession of the suit property. It was submitted that the presumption raised by virtue of mutation entry is rebutted by the subsequent amendment in the plaint which was made for possession of the property alleging that pending the suit, the plaintiffs were forcibly dispossessed from their part of the property. In my considered view, the evidence in that regard is definitely not a question of law but purely a question of fact and, therefore, it cannot be gone into. So far as the plea of adverse possession is concerned, it is needless to mention that it is also a issue of fact and lower appellate Court has

rightly discarded that aspect.

9. Time and again, the Apex Court has come to the conclusion that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. No doubt, it is true that the lower appellate Court should not ordinarily reject the witnesses accepted by the Trial Court in respect of credibility but even where it has rejected the witnesses accepted by the Trial Court, the same is no ground for interference in second appeal when it is found that the appellate Court has given satisfactory reasons for doing so. Under the circumstances, if this ratio is applied to the present case, it is to be noted that the reasoning adopted by the lower appellate Court is not only found to be legal and proper but it is also based upon the available evidence on record and definitely cannot be held to be perverse.

10. In view of this position, I am inclined to dismiss the appeal and in the result, the appeal stands dismissed with no order as to costs.

Consequently, Civil Application No. 1583 of 2005 also

stands dismissed with no order as to costs.

11. At this stage, the learned counsel for the appellants prayed for time to vacate the property. In view of the facts and circumstances, the appellants are given time to vacate the suit property and he shall vacate the suit property on or before 30th June, 2006 on

condition that he shall furnish undertaking to that effect in this Court within two weeks.

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